IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP No. 13474 of 2007

DATE OF DECISION: 28.8.2007

The Punjab State Agricultural Marketing Board and another

…Petitioners

Versus

State of Punjab and others

…Respondents

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

**HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present: Mr. Subhash Ahuja, Advocate,
for the petitioners.

**JUDGMENT**

**M.M. KUMAR, J.**

This petition filed under Article 226 of the Constitution is directed against the order dated 6.3.2006 (P-8), passed by the Financial Commissioner Development and Principal Secretary to Government of Punjab, Agriculture Department-respondent No. 2, under Section 42 of the Punjab Agriculture Produce Markets Act, 1961 (for brevity, 'the Act'), holding that the assessing authority has wrongly imposed market fee and Rural Development Fee (RDF) on respondent No. 3 firm. The revision petition filed by respondent No. 3 firm has been allowed and the order dated 5.8.2005 (P-5), passed by the appellate authority, assessment order as well as notice dated

11.3.2004 (P-3), passed by the Market Committee, Amloh-petitioner No. 2 have been set aside.

The facts which have led to the filing of the instant petition are that respondent No. 3 firm had obtained a license under Section 10 of the Act to dealing in purchase, sale, storage and processing of agricultural produce in the notified area of Market Committee Amloh, District Fatehgarh Sahib-petitioner No. 2. Respondent No. 3 firm purchased 12640 quintals of wheat, valued at Rs. 73,52,495/-, from the Food Corporation of India (FCI) under release order dated 23.12.2002 and lifted the same from the FCI Depot, Amloh. It has been alleged that respondent No. 3 firm sold the wheat in question to M/s Bhagwati Exports, Naya Bazar, Delhi and M/s Mahavir Trading, Naya Bazar, Delhi without furnishing the release order, paying the market fee and RDF as well as submitting 'KK Forms' to the petitioner Market Committee seeking exemption from paying the market fee and RDF. The wheat in question was never allowed to be exported outside the State by the petitioner Market Committee. On 16.1.2003 and 11.2.2003, the trucks loaded with wheat in question were detained by the officials of Ghanour Barrier and it was only then revealed that respondent No. 3 firm sold the wheat without making payment of market fee of Rs. 1,47,050/- and RDF amounting to Rs. 1,47,050/- On 13.2.2003, petitioner No. 2 Market Committee asked respondent No. 3 Firm to pay market fee and RDF or to submit 'KK Forms' and a certificate from the agency from which the wheat was purchased to ensure that the selling agency had paid market fee and RDF to the Market Committee on the wheat.

Subsequently, notice dated 27.6.2003 was issued to respondent No. 3 firm to produce its accounts books. Respondent No. 3 sought one month's time to produce its accounts books on the pretext that the same were lying with their Chartered Accountant, which were not produced even after issuance of second notice dated 19.8.2003. The Assessing Authority then issued notice dated 20.11.2003, under Rule 31(4) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (for brevity, 'the Rules'), which was not received by respondent No. 3 firm and subsequently two more notices dated 11.12.2003 and 22.12.2003 were sent and affixed at the premises of the partner of the firm. Then Assessing Authority passed an order dated 11.3.2004 directing respondent No. 3 firm to deposit an amount of Rs. 4,71,400/- (Rs. 1,47,050/- on account of Market fee, Rs. 1,47,050/- on account of RDF, Rs. 1,47,050/- as penalty and Rs. 30,250/- as interest on RDF @ 18% p.a.) on or before 18.3.2004 (P-3).

Feeling aggrieved, respondent No. 3 firm filed an appeal before the Secretary, Punjab Mandi Board, Chandigarh (P-4), which was dismissed on 5.8.2005 (P-5). The revision petition filed by respondent No. 3 firm before the Financial Commissioner and Principal Secretary to Government of Punjab-respondent No. 2, under Section 42 of the Act, has been allowed. The view of the Financial Commissioner emerges from the concluding para of the order, which reads as under:-

> " I have duly considered the arguments advanced by the contesting parties and have gone through the record placed on the file. From the record of the case it is clear

that the petitioner firm purchased wheat from the Food Corporation of India under a release order No. 12/wheat/Omss(D)/SPL/2k2 dated 23.12.02 from F.C.I. depot Amloh. The petitioner firm furnished the release order alongwith 'M' returns to Market Committee Amloh within the prescribed period. The petitioner sold the said wheat to M/s Bhagwati Exports Naya Bazaar Delhi and Shri Mahavir Traders, Naya Bazaar, Delhi directly from the depot godown. From the letter written by Inspector, Punsup, Amloh, dated 3rd March, 2006, which was produced in the court, it is clear that Punsup does not issue 'KK' Forms and Market Fee/RDF stands paid on the above said wheat at the time of purchase in the area of Market Committee, Amloh. The certificate dated 28.2.03 sent by Punsup Amloh addressed to the Secretary of respondent Committee also shows that he market fee and RDF stand paid on the wheat at the time of purchase in the area of Market Committee Amloh. Thus, the question of submission of 'KK' Forms does not arise. In this way the assessing authority had wrongly imposed Market Fee and RDF on the firm. Keeping in view the above facts the Revision Petition is allowed and impugned order dated 5.8.2005, the assessment order dated nil issued by Market Committee

Amloh, and Demand Notice dated 11.3.2004 are set aside."

In view of the above, the writ petition fails and the same is dismissed.

**(M.M. KUMAR)**
**JUDGE**

**(AJAY KUMAR MITTAL)**
**JUDGE**

**August 28, 2007**

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FIT FOR INDEXING